




OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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COR-117811-00

MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS (C:TA:TAO)

FROM: Stan Seemann 
Technical Advisor to the Special Counsel (NTAP)
(CC:NTA)

SUBJECT: 
















ISSUE:

Whether the statute of limitations for refund claims precludes the above named taxpayer from receiving a refund of tax withheld from his military disability severance pay in ?

CONCLUSION:

The taxpayer's claim for refund was timely filed. Providing you determine that the IRS has not issued a Notice of Claim Disallowance by either certified or registered mail to the taxpayer, the taxpayer's claim for refund is not statutorily barred.

FACTS:

In , the taxpayer received military disability severance pay in the amount of \$ from which \$ was withheld. The taxpayer reported this on his signed  Form 1040 by showing the severance pay as a non-taxable pension payment on line 17a and the withheld amount on line 54. The return, filed in early , did not reflect any other income, noted a standard deduction of \$, a deduction for exemptions of \$, and an overpayment on line 61 of \$. A full refund of the \$ was requested on line 62. Attached to the return was the taxpayer's discharge papers and a statement to the effect that the severance pay was non-taxable and that a % tax was withheld from the pay. No Form W-2 was attached to the return. The taxpayer subsequently submitted a Form W-2 from the  showing wages of \$ and withholding of \$. Based on this information, the Service assessed a tax liability of \$ plus interest and penalties. The taxpayer continually corresponded with the Service and the Department of Defense denying the liability and attempting to get a correct Form W-2. Finally, in , the Department of Defense corrected the taxpayer's account and the Service abated the liability. However, the Service refused to refund

PMTA: 00403

COR-117811-00

the \$[REDACTED] withheld, claiming that the statute of limitations for a refund of [REDACTED] withholding had expired three years after the [REDACTED] return was filed. There is no indication in the file that the Service has issued a Notice of Denial of Claim by either certified or registered mail to the taxpayer.

LAW AND ANALYSIS:

Section 301.6402-3(a) of the regulations provides the general rule that a claim for an overpayment of income tax, shall be made on the appropriate income tax form. The regulation further provides that a return shall constitute a claim for refund if it contains a statement setting forth the amount of the overpayment and advising that such amount should be refunded to the taxpayer.

Section 6511(a) of the Internal Revenue Code provides that a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

Section 6513(b) provides that any tax withheld at the source during the calendar year shall be deemed to have been paid by the taxpayer on April 15th of the following year.

Section 6532(a)(1) provides, in part, that no suit for refund of taxes paid may be brought after the expiration of 2 years from the date of mailing by certified mail or registered mail of a notice of denial of a claim to which the suit relates.

The [REDACTED] Form 1040 the taxpayer filed in early [REDACTED] reflected the amount of the overpayment of \$[REDACTED] and requested that this amount be refunded to the taxpayer. This return was filed within the 2 year period specified in section 6511(a) as the tax is deemed to have been paid on [REDACTED]. There is no evidence in the file that the Service sent the taxpayer a Notice of Denial of the Claim by either certified or registered mail.

In this case, the taxpayer's [REDACTED] Form 1040 constitutes a timely filed claim for refund which appears not to have been formally denied by the Service. Thus, providing the Service did not issue a Notice of Claim Disallowance by either certified or registered mail, the taxpayer can still bring suit for recovery of the overpayment and the Service is not barred from refunding all or part of the overpayment.

Your administrative file is attached. If you have any questions, please call me on 2-4947.

Attachment (1)